

Please enter the following amendments and remarks:

STATUS OF THE CLAIMS

Claims 1-55 are pending in the Application.

Claims 1-55 have been restricted by the Examiner.

Reconsideration of the present Application is respectfully requested.

REMARKS

Claims 1 – 55 have been restricted under 35 U.S.C. § 121. Applicant respectfully traverses this restriction and provisionally elects as follows.

The present Office Action restricts the present application claiming that “[t]his application contains claims directed to the following patentably distinct species of the claimed invention:

Species I: Figures 1.

Species II: Figure 4.

Species III: Figures 5 & 6.”

Applicant respectfully submits that 35 U.S.C. § 121 recites that

If two or more independent and distinct inventions are **claimed** in one application, the Director may require the application to be restricted to one of the

inventions. If the other invention is made the subject of a divisional application which complies with the requirements of section 120 of this title it shall be entitled to the benefit of the filing date of the original application. A patent issuing on an application with respect to which a requirement for restriction under this section has been made, or on an application filed as a result of such a requirement, shall not be used as a reference either in the Patent and Trademark Office or in the courts against a divisional application or against the original application or any patent issued on either of them, if the divisional application is filed before the issuance of the patent on the other application. If a divisional application is directed solely to subject matter described and claimed in the original application as filed, the Director may dispense with signing and execution by the inventor. The validity of a patent shall not be questioned for failure of the Commissioner to require the application to be restricted to one invention.

[Emphasis Added].

As set forth in the MPEP, there are two criteria for a proper requirement for restriction between patentably distinct **inventions**:

(A) The **inventions** must be independent (see MPEP § 802.01, § 806.04, § 808.01) or distinct as **claimed** (see MPEP § 806.05 - § 806.05(i)); and

(B) There must be a serious burden on the examiner if restriction is required (see MPEP § 803.02, § 806.04(a) - § 806.04(i), § 808.01(a), and § 808.02).

MPEP § XXXXX.

Applicant respectfully submits that the present Office Action has provided a restriction requirement and categorizes the application based on figures. This

is inapposite to the requirements outlined in both 35 U.S.C. § 121 and MPEP § XXXX, as discussed above. As stated in MPEP XXXX and 35 U.S.C. 121, a restriction must be based on the “inventions” as “claimed”, not as set forth in the figures. Further, Applicant cannot elect a species based on figures, at least because Applicant, in electing, is unable to cancel or withdraw the non-elected figures. All figures as filed will remain the application.

Because Applicant cannot identify the claims correspondent to the Species identified in the present Office Action, and in an effort to be as fully responsive as possible under the circumstances, Applicant has made an attempt to classify the claims into three categories, as guided by the statements of the present Office Action. Applicant thus respectfully submits that the three claims sets: (1) Claims 1-51, (2) Claim 52, and (3) Claims 53-55 are representative of the species identified in the present Office Action.

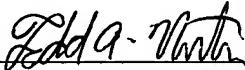
In response to this restriction, Applicant hereby elects, without prejudice and with traverse, Invention I, correspondent to Claims 1-51, for prosecution on the merits in the present application.

Applicant respectfully traverses the restriction on the basis that the examination of the claims within Inventions II and III of the instant Office Action would not require an additional search outside of the field or fields searched in and for the examination of Invention I, and therefore no additional burden exists to suggest that Inventions II and III should be properly examined separate and apart from Species A. See, MPEP § 803.

Conclusion

Applicant respectfully requests early and favorable action with regard to the present Application, and a Notice of Allowance for all pending claims is earnestly solicited.

Respectfully Submitted,



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